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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,326	10/03/2002	Steven Curtis Zicker	7017-00-HL	9314
23909 7590 07/29/2011 COLGATE-PALMOLIVE COMPANY 909 RIVER ROAD PISCATAWAY, NJ 08855				
EXAMINER KIM, JENNIFER M				
ART UNIT		PAPER NUMBER		
1628				
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07/29/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/065,326

Applicant(s)

ZICKER ET AL.

Examiner

JENNIFER M. KIM

Art Unit

1628

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-11 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 27, 2010 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishihara et al (U.S. Patent No. 6,279,280 B1) of in view of Reisbick et al of record.

Ishihara et al claimed a composition for suppressing behavior problems of pets, comprising one or more compounds including eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA) (see claims 1 and 2). Ishihara et al claimed the dosages of EPA and DHA per administration is 0.2 to 80mg per one kilogram of the body weight of the pet (see claim 4). Ishihara et al claimed that the pet to be treated can be dogs or cats (see claim 5). Ishihara et al teach that the dogs and cats are preferable for the use of the composition (column 3 lines 43-47). Ishihara et al claimed the behavior problem

to be treated including attack, destruction, inappropriate elimination, licking its paw repeatedly, scratching, cryptogenic astasia, shivering, astasia, pray, scratching cryptogenic astasia, shivering, abnormal appestat associated with dynamia, aberrant motor behavior, dysbasia, abnormal sense, abnormal posture, abnormal vocalizing, loss of feeling, loss of interrelation and abnormal situation judgment (see claim 6). Ishihara et al additionally disclose the behavior problems on column 3 line 50-column 4 line 14. Ishihara et al teach that the composition can be administered orally as a pet food (column 4 lines 29-40). It is noted that there is no indication that the cats and dogs disclosed by Ishihara et al are suffering from cancer or arthritis.

Ishihara et al do not expressly teach the percentage of DHA and/EPA set forth in claims 1, 9 and 10 and the age of pets set forth in claims 3, 4 and 7.

Reisbick et al. teach that dietary deficiency and supplementation of omega-3 fatty acids have been associated with several effects on behavior. (page 419, summary). Reisbick et al. teach that a decrease in dopamine and/or dopamine receptors in the prefrontal cortex of deficient animals increase their responsivity to environmental stimuli. Reisbick et al. teach that DHA levels will correlate simultaneously with both levels of dopamine and Dopamine2 receptors and certain behaviors. (page 419).

It would have been obvious to one of ordinary skill in the art to optimize the dosage of DHA and EPA in Ishihara's composition for the moderating the behavior of a dog or cats because DHA and EPA are known to be useful for suppressing behavior problems of pets as claimed by Ishihara and because Reisbick et al teach that omega-3 fatty acids effects behavior of animal particular DHA content. One would have been

motivated to optimize the dosage of DHA and EPA in Ishihara's composition in order to achieve an expected therapeutic benefit in influencing behavior in animal as claimed by Ishihara and the known knowledge at the time the invention was made that omega 3-fatty acids influencing animal's behavior. Further, one of ordinary skill in the art would be motivated to employ the composition taught by Ishihara regardless of the age of dogs or cats as long as there is a behavior modification is needed without surprising and unexpected results in the age group.

For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.

None of the claims are allowed.

Response to Arguments

Applicant's arguments with respect to claims 1, 3-7, 9 and 11 have been considered but are moot in view of the new ground(s) of rejection.

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER M. KIM whose telephone number is (571)272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brandon Fetterolf can be reached on 571-272-2919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JENNIFER M KIM/
Primary Examiner, Art Unit 1628

Jmk
July 22, 2011